

SERVICE DATE – AUGUST 23, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1009 (Sub-No. 1X)

MISSION MOUNTAIN RAILROAD, L.L.C.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN FLATHEAD COUNTY, MONT.

Digest:¹ This decision permits Mission Mountain Railroad, L.L.C., to discontinue rail service over approximately 2.7 miles of rail line in Kalispell, Mont., subject to standard employee protective conditions.

Decided: August 21, 2017

On June 5, 2017, Mission Mountain Railroad, L.L.C. (MMT), filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its lease operations over approximately 2.7 miles of rail line owned by BNSF Railway Company (BNSF) in Flathead County, Mont. (the Line).² The Line is located from milepost 1225.19 to milepost 1227.58 and from milepost 1226.91 to Engineering Station 189+36 (milepost 1227.10) in Kalispell, Mont., and traverses United States Postal Service Zip Code 59901.

Notice of the exemption proceeding was served and published in the Federal Register on June 23, 2017 (82 Fed. Reg. 28,731). No comments concerning the proposed discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On April 26, 2017, BNSF filed a petition with the Board seeking authority to abandon the Line in BNSF Railway—Abandonment Exemption—in Flathead, County, Mont. (Abandonment Proceeding), Docket No. AB 6 (Sub-No. 495X). On August 14, 2017, the Board granted the exemption subject to several conditions, including a condition prohibiting BNSF from consummating the abandonment until shippers on the Line have been relocated and MMT has discontinued service over the Line. See Abandonment Proceeding, AB 6 (Sub-No. 495X), slip op. at 1 (STB served Aug. 14, 2017).

BACKGROUND

In January 2005, MMT acquired Board authority to lease the Line from The Burlington Northern and Santa Fe Railway Company (now known as BNSF Railway Company). See Mission Mountain R.R.—Acquis. Exemption—Burlington N. & Santa Fe R.R. (MMR Notice), FD 34634 (STB served Jan. 19, 2005). MMT states that it provides local service to two customers, Northwest Drywall & Building Supply (Northwest Drywall) and CHS Inc. (CHS). According to MMT, neither customer opposes the discontinuance of service by MMT over the Line, because they will be relocated to Glacier Rail Park, where MMT will provide the shippers service at their new locations.³

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10901; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of MMT's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. § 10101(2), (7), & (15). According to MMT, discontinuing service over the Line would improve MMT's overall operating efficiencies in the area, thus fostering sound economic conditions and encouraging efficient management. 49 U.S.C. § 10101(5) & (9). Other aspects of the RTP would not be adversely affected by the exemption.

The Board also finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. Neither shipper would lose rail service or experience a reduction in the number of carriers authorized to provide it with rail service. Shippers currently served by MMT on the Line would continue to receive rail service from MMT at Glacier Rail Park; BNSF would continue to have an underlying common carrier obligation to provide rail service at Glacier Rail Park in the event MMT fails to do so. The new arrangement would not reduce the number of rail options available to the shippers; it would simply result in a relocation

³ On August 10, 2017, in the Abandonment Proceeding, CHS filed a request asking that the Board defer ruling on BNSF's abandonment petition until agreements with the city of Kalispell and the Flathead County Economic Development Authority to fund CHS's move to Glacier Rail Park are finalized. See Abandonment Proceeding, AB 6 (Sub-No. 495X), slip op. at 2. CHS anticipates finalizing the agreements will take 30 to 60 days. (*Id.*) BNSF submitted a response on August 11, 2017, stating that it does not intend to consummate the abandonment before CHS and Northwest Drywall are relocated. (*Id.*) As discussed below, the Board conditioned BNSF's abandonment on relocation of CHS and Northwest Drywall.

of where the shippers receive service without adverse competitive consequences. Further, the Board has conditioned consummation of the abandonment on MMT discontinuing service and Northwest Drywall and CHS being relocated. Abandonment Proceeding, AB 6 (Sub-No. 495X), slip op. at 2 n.2, 3. Should MMT discontinue service prior to the shippers' relocation to Glacier Rail Park, BNSF would continue to have an underlying common carrier obligation to provide rail service at their current location.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, MMT must provide the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Similarly, neither an Environmental Report nor a Historic Report is required here, as environmental and historic review took place in the abandonment proceeding. See BNSF Ry.—Aban. Exemption—in Flathead, Cty., Mont., AB 6 (Sub-No. 495X), slip op. at 3-4 (STB served Aug. 14, 2017). Also in that proceeding, the Board imposed trail use and public use conditions. See id. at 4-5.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by MMT over the above-described rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by MMT and the Board by September 1, 2017, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1).⁴ Each OFA must be accompanied by the filing fee, which currently is set at \$1,700, but as of September 1, 2017, will be \$1,800. See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update, EP 542 (Sub-No. 24) (STB served July 28, 2017).

⁴ The Board's regulations regarding OFAs have recently been modified. See Offers of Financial Assistance, EP 729 (STB served June 29, 2017). Among other modifications, any person now seeking to file an OFA must provide evidence of a continued need for rail service on the line subject to the OFA. 49 C.F.R. § 1152.27(c)(1)(iv)(E).

3. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”

4. Petitions to stay and petitions to reopen must be filed by September 7, 2017.

5. This exemption will be effective on September 22, 2017.

By the Board, Board Members Begeman, Elliott, and Miller.